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John R. Burgeson

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EXAMINER

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/790,271
Filing Date: March 01, 2004
Appellant(s): BURGESSON, JOHN R.

Gerald E. Helget
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 5, 2006 appealing from the Office action mailed December 2, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

No amendment after final has been filed.

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

WITHDRAWN REJECTIONS

The following grounds of rejection are not presented for review on appeal because they have been withdrawn by the examiner.

Rejection of claims 1, 2, 4, 5 and 8-12 under 35 U.S.C. 102(b) as being anticipated by Fuld et al. (2,251,734)..

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

2,991,517	Bundy	7-1961
5,810,253	Ohayon	9-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2, 4, 5 and 8-12 rejected under 35 U.S.C. 102(b) as being anticipated by Bundy (2,991,517).

Claim 1:

Bundy discloses a temperature activated scent wick comprising:

a container **D** made of substantially rigid material (**column 3, lines 46-50: flexible plastic material such as polyethylene; container D is substantially rigid to the extent it retains its shape and flexes only when squeezed by hand, i.e., a squeeze bottle; appellant himself discloses, in his specification, on page 5, line 12, that his substantially rigid container 12 is a glass or plastic bottle**) so as to resist atmospheric pressure affects having an interior volume for holding (**“for holding” merely recites intended use**) a volume of scent (**column 1, lines 10: deodorant, or the like**) and a volume of air (**see figure 1: volume of air above the liquid**), the container **D** adapted for suspension above the ground (**“adapted for” does not constitute a positive limitation, but see figures 2-4 showing wall mounting**);

a cap **32** for sealing the container **D**;

a temperature buffering scent reservoir (**channel through nozzle E having opening 33**) passing through the cap **32** with an interior intake end (**upstream of the channel through nozzle E having opening 33**) in flow communication with the interior scent volume and an exterior release end (**outlet end of opening 33**); and

an absorbent scent wick **B** securable about (**interpreted as: in the vicinity of**) the temperature buffering scent reservoir exterior release end (**outlet end of opening 33**) wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent.

Note: Regarding the wherein clause, appellant discloses, in the specification, on page 6, lines 17-19, "This stoppage of flow is due primarily to the fact that interior volume 14 is sealed to prevent air from leaking into that interior volume and thereby allowing scent to be released." Bundy discloses, in column 3, lines 15-17, "...container D has a central spray opening 33, which opening is of a size to normally prevent the escape or flow of fluid from the container when it is inverted..." Therefore, the pressure increase and decrease inside the container D associated with temperature increase and decrease as a result of the presence or absence of the sun would inherently result in Bundy performing appellant's wherein cause. The increase in pressure associated with increase in temperature would simulate the pressure increase associated with squeezing the container D. The decrease in temperature will decrease the pressure in

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the container D and simulate the pressure reduction in container D when container returns to its normal shape after being squeezed. As temperature decreases, pressure will decrease. As pressure decreases, the scent will stop flowing and with continued pressure decrease in the container, the scent will be drawn into the container with the outside air.

Claim 2:

Bundy further discloses:

the wick **B** does not touch the exterior release end (**see figure 2**).

Claim 4:

Bundy further discloses:

the reservoir (**channel through nozzle E having opening 33**) comprises a tube (**see channel through nozzle E having opening 33 in figure 2**) of diameter as to hold the scent within the reservoir with surface tension (**column 3, lines 15-17**).

Claim 5:

Bundy further discloses:

the reservoir (**channel through nozzle E having opening 33**) comprises a tube (**see channel through nozzle E having opening 33 in figure 2**) with up and down angles (**the tube has angles that go up and angles that go down, e.g. the converging and diverging angles in the inside of the tube**) as to hold the scent within the reservoir.

Note: Claim 5 does NOT require that the tube have the ability to be placed in two positions, i.e., an up angle position and a down angle position.

Claim 8:

Bundy discloses a temperature activated scent wick comprising:

a container **D** made of substantially rigid material (**column 3, lines 46-50: flexible plastic material such as polyethylene; container D is substantially rigid to the extent it retains its shape and flexes only when squeezed by hand, i.e., a squeeze bottle; appellant himself discloses, in his specification, on page 5, line 12, that his substantially rigid container 12 is a glass or plastic bottle**) so as to resist atmospheric pressure affects having an interior volume for holding (**“for holding” merely recites intended use**) a volume of scent (**column 1, lines 10: deodorant, or the like**) and a substantially equal or greater volume of air (**see figure 1: volume of air above the liquid when the container is half filled with liquid scent**), the container **D** adapted for suspension above the ground (**“adapted for” does not constitute a positive limitation, but see figures 2-4 showing wall mounting**) with a downwardly directed opening **30**;

a cap **32** for sealing the container **D**;

a temperature buffering scent reservoir (**channel through nozzle E having opening 33**) passing through the cap **32** with an interior intake end (**upstream of the channel through nozzle E having opening 33**) in flow communication with the interior scent volume and an exterior release end (**outlet end of opening 33**); and

an absorbent scent wick **B** securable about (**interpreted as: in the vicinity of**) but apart from the exterior release end (**outlet end of opening 33**) wherein an increase in ambient temperature associated with morning and afternoon will result in

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the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir onto the wick, and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent.

Note: Regarding the wherein clause, appellant discloses, in the specification, on page 6, lines 17-19, "This stoppage of flow is due primarily to the fact that interior volume 14 is sealed to prevent air from leaking into that interior volume and thereby allowing scent to be released." Bundy discloses, in column 3, lines 15-17, "...container D has a central spray opening 33, which opening is of a size to normally prevent the escape or flow of fluid from the container when it is inverted..." Therefore, the pressure increase and decrease inside the container D associated with temperature increase and decrease as a result of the presence or absence of the sun would inherently result in Bundy performing appellant's wherein cause. The increase in pressure associated with increase in temperature would simulate the pressure increase associated with squeezing the container D. The decrease in temperature will decrease the pressure in the container D and simulate the pressure reduction in container D when container returns to its normal shape after being squeezed. As temperature decreases, pressure will decrease. As pressure decreases, the scent will stop flowing and with continued pressure decrease in the container, the scent will be drawn into the container with the outside air.

Claim 9:

Claim 9 is dependent on claim 7, but the examiner believes that this is a typographical error and the claim should be dependent on claim 8. Otherwise, the claim should be withdrawn as being directed to a non-elected species.

Bundy further discloses:

the reservoir (**channel through nozzle E having opening 33**) comprises a tube (**see channel through nozzle E having opening 33 in figure 2**) of diameter as to hold the scent within the reservoir with surface tension (**column 3, lines 15-17**).

Claim 10:

Claim 10 is dependent on claim 7, but the examiner believes that this is a typographical error and the claim should be dependent on claim 8. Otherwise, the claim should be withdrawn as being directed to a non-elected species.

Bundy further discloses:

the decrease in ambient temperature will draw the scent from the tube and housing with air back into the container.

Note: This functional wherein recitation is inherent in the device of Bundy. A decrease in temperature will decrease the pressure in the container D and simulate the pressure reduction in container D when container returns to its normal shape after being squeezed. Additionally, the term "housing" has been considered to reiterate or rename the tube because the tube also houses the scent, i.e., the tube in addition to being a tube is a housing. Otherwise, the claim fails to provide an antecedent basis for the term.

Claim 11:

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Bundy discloses a temperature activated scent wick comprising:

a container **D** adapted to be suspended above the ground from a tree (**“adapted for” does not constitute a positive limitation, but see figures 2-4 showing wall mounting; the container is adapted to be mounted to a sidewall of a tree**) made of substantially rigid material (**column 3, lines 46-50: flexible plastic material such as polyethylene; container D is substantially rigid to the extent it retains its shape and flexes only when squeezed by hand, i.e., a squeeze bottle; appellant himself discloses, in his specification, on page 5, line 12, that his substantially rigid container 12 is a glass or plastic bottle**) so as to resist atmospheric pressure affects having an interior volume for holding (**“for holding” merely recites intended use**) a volume of scent (**column 1, lines 10: deodorant, or the like**) and a substantially equal or greater volume of air (**see figure 1: volume of air above the liquid when the container is half filled with liquid scent**), the container **D** adapted for suspension above the ground;

a cap **32** for sealing the container **D**;

a temperature buffering scent reservoir (**channel through nozzle E having opening 33**) comprising a tube (**see channel through nozzle E having opening 33 in figure 2**) of small diameter (**column 3, lines 15-17**) passing through the cap **32** with an interior intake end (**upstream of the channel through nozzle E having opening 33**) in flow communication with the interior scent volume and an exterior release end (**outlet end of opening 33**); and

an absorbent scent wick **B** securable about **(interpreted as: in the vicinity of)** the temperature buffering scent reservoir exterior release end **(outlet end of opening 33)** wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent but rather will draw the scent from the tube with air bubbles into the container.

Note: Regarding the wherein clause, appellant discloses, in the specification, on page 6, lines 17-19, "This stoppage of flow is due primarily to the fact that interior volume 14 is sealed to prevent air from leaking into that interior volume and thereby allowing scent to be released." Bundy discloses, in column 3, lines 15-17, "...container D has a central spray opening 33, which opening is of a size to normally prevent the escape or flow of fluid from the container when it is inverted..." Therefore, the pressure increase and decrease inside the container D associated with temperature increase and decrease as a result of the presence or absence of the sun would inherently result in Bundy performing appellant's wherein cause. The increase in pressure associated with increase in temperature would simulate the pressure increase associated with squeezing the container D. The decrease in temperature will decrease the pressure in the container D and simulate the pressure reduction in container D when container returns to its normal shape after being squeezed. As temperature decreases, pressure will decrease. As pressure decreases, the scent will stop flowing and with continued

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pressure decrease in the container, the scent will be drawn into the container with the outside air.

Claim 12:

Bundy further discloses:

the tube **(see channel through nozzle E having opening 33 in figure 2)** has up and down angles **(the tube has angles that go up and angles that go down, e.g. the converging and diverging angles in the inside of the tube)** as to hold the scent within the reservoir.

Note: Claim 12 does NOT require that the tube have the ability to be placed in two positions, i.e., an up angle position and a down angle position.

Claims 1, 2, 4, 5 and 8-12 rejected under 35 U.S.C. 102(b) as being anticipated by Ohayon (5,810,253).

Claim 1:

Ohayon discloses a temperature activated scent wick comprising:

a container **31,32** made of substantially rigid material **(column 7, lines 16: rigid or semi-rigid)** so as to resist atmospheric pressure affects **(column 7 line 55 through column 8, line 11)** having an interior volume for holding **(“for holding” merely recites intended use)** a volume of scent **100** and a volume of air **(see figure 1: volume of air above the liquid 100)**, the container **31,32** adapted for suspension above the ground **(“adapted for” does not constitute a positive limitation, but see 24b);**

a cap **33** for sealing the container **31,32**;

a temperature buffering scent reservoir **35,36,38** passing through the cap **33** with an interior intake end **35** in flow communication with the interior scent volume and an exterior release end **38**; and

an absorbent scent wick **40** securable about **(interpreted as: in the vicinity of)** the temperature buffering scent reservoir exterior release end **38** wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent.

Note: Regarding the wherein clause, appellant discloses, in the specification, on page 6, lines 17-19, "This stoppage of flow is due primarily to the fact that interior volume 14 is sealed to prevent air from leaking into that interior volume and thereby allowing scent to be released." Ohayon discloses, in column 7 line 55 through column 8, line 11, "... valve (36) may be actuated indirectly and set to open following a predetermined buildup of pressure inside the reservoir (3), and close when internal and external pressures are equalized, and this type of valve is well-known in the art..." Pressure inside container 31,32 is directly dependent on temperature. As temperature increases, pressure will increase, and as temperature decreases, pressure will decrease. This is evidenced by the ideal gas law $PV = nRT$.

Claim 2:

Ohayon further discloses:

the wick **40** does not touch the exterior release end **38** (**see figure 2**).

Claim 4:

Ohayon further discloses:

the reservoir **35,36,38** comprises a tube (**see figure 2**) of diameter as to hold the scent within the reservoir with surface tension (**liquid 100 is at least in part held within 38 by surface tension when the pressure within container 31,32 is equalized with the outside pressure and no liquid 100 is dispensed or sucked back into the container 31,32**).

Claim 5:

Ohayon further discloses:

the reservoir **35,36,38** comprises a tube (**see figure 2**) with up and down angles (**the tube has angles that go up and angles that go down, e.g. the conical surface inside the tube and conical surface outside the tube, or the upstream surface of valve 36 and the downstream surface of valve 36**) as to hold the scent within the reservoir.

Note: Claim 5 does NOT require that the tube have the ability to be placed in two positions, i.e., an up angle position and a down angle position.

Claim 8:

Ohayon discloses a temperature activated scent wick comprising:

a container **31,32** made of substantially rigid material (**column 7, lines 16: rigid or semi-rigid**) so as to resist atmospheric pressure affects having an interior

volume for holding (**“for holding” merely recites intended use**) a volume of scent **100** and a substantially equal or greater volume of air (**see figure 1: volume of air above the liquid when the container is half filled with liquid scent**), the container **31,32** adapted for suspension above the ground (**“adapted for” does not constitute a positive limitation, but see 24b**) with a downwardly directed opening **34**;

a cap **33** for sealing the container **31,32**;

a temperature buffering scent reservoir **35,36,38** passing through the cap **33** with an interior intake end **35** in flow communication with the interior scent volume and an exterior release end **38**; and

an absorbent scent wick **40** securable about (**interpreted as: in the vicinity of**) but apart from the exterior release end **38** wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir onto the wick, and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent.

Note: Regarding the wherein clause, appellant discloses, in the specification, on page 6, lines 17-19, “This stoppage of flow is due primarily to the fact that interior volume 14 is sealed to prevent air from leaking into that interior volume and thereby allowing scent to be released.” Ohayon discloses, in column 7 line 55 through column 8, line 11, “... valve (36) may be actuated indirectly and set to open following a predetermined buildup of pressure inside the reservoir (3), and close when internal and

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external pressures are equalized, and this type of valve is well-known in the art..."

Pressure inside container 31,32 is directly dependent on temperature. As temperature increases, pressure will increase, and as temperature decreases, pressure will decrease. This is evidenced by the ideal gas law $PV = nRT$.

Claim 9:

Claim 9 is dependent on claim 7, but the examiner believes that this is a typographical error and the claim should be dependent on claim 8. Otherwise, the claim should be withdrawn as being directed to a non-elected species.

Ohayon further discloses:

the reservoir **35,36,38** comprises a tube (**see figure 2**) of diameter as to hold the scent within the reservoir with surface tension (**liquid 100 is at least in part held within 38 by surface tension when the pressure within container 31,32 is equalized with the outside pressure and no liquid 100 is dispensed or sucked back into the container 31,32**).

Claim 10:

Claim 10 is dependent on claim 7, but the examiner believes that this is a typographical error and the claim should be dependent on claim 8. Otherwise, the claim should be withdrawn as being directed to a non-elected species.

Ohayon further discloses:

the decrease in ambient temperature will draw the scent from the tube and housing with air back into the container (**column 7 line 55 through column 8, line 11: "...valve (36) may be actuated indirectly and set to open following a**

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predetermined buildup of pressure inside the reservoir (3), and close when internal and external pressures are equalized, and this type of valve is well-known in the art...”).

Note: The term “housing” has been considered to reiterate or rename the tube because the tube also houses the scent, i.e., the tube in addition to being a tube is a housing. Otherwise, the claim fails to provide an antecedent basis for the term.

Claim 11:

Ohayon discloses a temperature activated scent wick comprising:

a container **31,32** adapted to be suspended above the ground from a tree (**“adapted for” does not constitute a positive limitation, but see figures 24b**) made of substantially rigid material (**column 7, lines 16: rigid or semi-rigid**) so as to resist atmospheric pressure affects (**column 7 lines 55-60**) having an interior volume for holding (**“for holding” merely recites intended use**) a volume of scent **100** and a substantially equal or greater volume of air (**see figure 1: volume of air above the liquid when the container is half filled with liquid scent**), the container **31,32** adapted for suspension above the ground;

a cap **33** for sealing the container **31,32**;

a temperature buffering scent reservoir **35,36,38** comprising a tube (**see figure 2**) of small diameter (**see figure 2, the tube diameter is small compared to the container 31,32**) passing through the cap **33** with an interior intake end **35** in flow communication with the interior scent volume and an exterior release end **38**; and

an absorbent scent wick **40** securable about **(interpreted as: in the vicinity of)** the temperature buffering scent reservoir exterior release end **38** wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent but rater will draw the scent from the tube with air bubbles into the container.

Note: Regarding the wherein clause, appellant discloses, in the specification, on page 6, lines 17-19, "This stoppage of flow is due primarily to the fact that interior volume 14 is sealed to prevent air from leaking into that interior volume and thereby allowing scent to be released." Ohayon discloses, in column 7 line 55 through column 8, line 11, "...valve (36) may be actuated indirectly and set to open following a predetermined buildup of pressure inside the reservoir (3), and close when internal and external pressures are equalized, and this type of valve is well-known in the art..." Pressure inside container 31,32 is directly dependent on temperature. As temperature increases, pressure will increase, and as temperature decreases, pressure will decrease. This is evidenced by the ideal gas law $PV = nRT$. As pressure decreases, the liquid will stop flowing and with continued pressure decrease in the container, the liauid will be drawn into the container with the outside air.

Claim 12:

Ohayon further discloses:

the tube **35,36,38** has up and down angles **(the tube has angles that go up and angles that go down, e.g. the conical surface inside the tube and conical surface outside the tube, or the upstream surface of valve 36 and the downstream surface of valve 36)** as to hold the scent within the reservoir.

Note: Claim 12 does NOT require that the tube have the ability to be placed in two positions, i.e., an up angle position and a down angle position.

(10) Response to Argument

Appellant argues that Bundy does not disclose a temperature buffering scent reservoir wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent. Bundy discloses, in column 3, lines 15-17, "...container **D** has a central spray opening **33**, which opening is of a size to normally prevent the escape or flow of fluid from the container when it is inverted..." Therefore, the pressure increase and decrease inside the container **D** associated with temperature increase and decrease as a result of the presence or absence of the sun would inherently result in Bundy performing appellant's wherein cause. The increase in pressure associated with increase in temperature would simulate the pressure increase associated with squeezing the container **D**. The decrease in temperature will decrease the pressure in the container **D** and simulate the pressure reduction in container **D** when

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container returns to its normal shape after being squeezed. As temperature decreases, pressure will decrease. As pressure decreases, the scent will stop flowing and with continued pressure decrease in the container, the scent will be drawn into the container with the outside air. The relationship of temperature and pressure is evidenced by the ideal gas law equation $PV = nRT$. Pressure and temperature are directly proportional. Additionally, it is normal everyday occurrence that temperature increases from morning to late afternoon and then decreases into the night. The internal pressure in the device of Bundy, when exposed to the environment, will increase and then decrease from morning to night as temperature increases and then decreases.

Appellant argues that Bundy discloses a flexible plastic container and not a rigid container as described in the Specification of Applicant's application, page 6, last paragraph. The last paragraph on page 6 of appellant's specification is not recited in the claimed invention. This portion of appellant's argument is not commensurate in scope with the claimed invention. As for the term rigid, Ohayon (US Patent 5,810,253) is offered as evidence that even a squeezable and flexible bottle is considered rigid. Ohayon discloses a "rigid or semi-rigid reservoir (30)" in column 7, lines 15-16. Ohayon further describes, in column 7, lines 59-67, "Pressure may be increased in a reservoir (30) made from a semi-rigid material by squeezing the same, when the release of some of the liquid contents (100) will equalize the pressure inside the reservoir (30)... The reservoir walls are preferably made from a sufficiently pliant and flexible material, so that when the "squeezing action" is terminated, the reservoir assumes its original shape." Bundy's container **D** is made from flexible plastic material such as polyethylene

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(column 3, lines 46-50). Container **D** is substantially rigid to the extent it retains its shape and flexes only when squeezed by hand, i.e., a squeeze bottle, unlike a piece of clothing which is incapable of retaining its form. Appellant himself discloses, in his specification, on page 5, line 12, that his substantially rigid container **12** is a glass or plastic bottle.

Appellant argues that Bundy does not disclose the reservoir comprising a tube of diameter as to hold the scent within the reservoir with surface tension. Bundy discloses the reservoir (**channel through nozzle E having opening 33**) comprises a tube (**see channel through nozzle E having opening 33 in figure 2**) of diameter as to hold the scent within the reservoir with surface tension (**column 3, lines 15-17: opening is of a size to normally prevent the escape or flow of fluid from the container when it is inverted**).

Appellant argues that Bundy does not disclose the reservoir comprising a tube with up and down angles as to hold the scent within the reservoir. Bundy discloses the reservoir (**channel through nozzle E having opening 33**) comprises a tube (**see channel through nozzle E having opening 33 in figure 2**) with up and down angles (**the tube has angles that go up and angles that go down, e.g. the converging and diverging angles in the inside of the tube**) as to hold the scent within the reservoir. Claims 5 and 12 do NOT require that the tube have the ability to be placed in two positions, i.e., an up angle position and a down angle position.

Appellant argues that Bundy does not disclose a temperature buffering scent reservoir passing through the cap. Bundy shows, in figure 2, the reservoir (the tubular portion of nozzle **E** having opening **33**) passing through cap **32**.

Appellant argues that Bundy does not disclose decrease in ambient temperature will draw the scent from the tube and housing with air back into the container. This functional wherein recitation is inherent in the device of Bundy. A decrease in temperature will decrease the pressure in the container **D** and simulate the pressure reduction in container **D** when container returns to its normal shape after being squeezed. Additionally, the term "housing" has been considered to reiterate or rename the tube because the tube also houses the scent, i.e., the tube in addition to being a tube is a housing. Otherwise, the claim fails to provide an antecedent basis for the term.

Appellant argues that Bundy does not disclose a tube of small diameter passing through the cap. See Bundy, column 3, lines 15-17.

Appellant argues that Ohayon does not disclose a temperature buffering scent reservoir wherein an increase in ambient temperature associated with morning and afternoon will result in the interior volume of air expanding to force the scent to pass through the temperature buffering scent reservoir on to the wick and a decrease in ambient temperature associated with later day will result in stopping the scent from passing through the reservoir as to conserve the scent. Ohayon discloses, in column 7 line 55 through column 8, line 11, "... valve (36) may be actuated indirectly and set to open following a predetermined buildup of pressure inside the reservoir (3), and close

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when internal and external pressures are equalized, and this type of valve is well-known in the art..." Additionally, it is normal everyday occurrence that temperature increases from morning to late afternoon and then decreases into the night. The internal pressure in the device of Ohayon, when exposed to the environment, will increase and then decrease from morning to night as temperature increases and then decreases.

Appellant argues that Ohayon does not disclose the reservoir comprising a tube of diameter as to hold the scent within the reservoir with surface tension. Ohayon discloses the reservoir **35,36,38** comprises a tube (**see figure 2**) of diameter as to hold the scent within the reservoir with surface tension (**liquid 100 is at least in part held within 38 by surface tension when the pressure within container 31,32 is equalized with the outside pressure and no liquid 100 is dispensed or sucked back into the container 31,32**).

Appellant argues that Ohayon does not disclose the reservoir comprising a tube with up and down angels as to hold the scent within the reservoir. Ohayon discloses the reservoir **35,36,38** comprises a tube (**see figure 2**) with up and down angles (**the tube has angles that go up and angles that go down, e.g. the conical surface inside the tube and conical surface outside the tube, or the upstream surface of valve 36 and the downstream surface of valve 36**) as to hold the scent within the reservoir. Claims 5 and 12 do NOT require that the tube have the ability to be placed in two positions, i.e., an up angle position and a down angle position.

Appellant argues that Ohayon does not disclose a temperature buffering scent reservoir passing through the cap. Ohayon discloses a temperature buffering scent

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reservoir **35,36,38** passing through the cap **33** with an interior intake end **35** in flow communication with the interior scent volume and an exterior release end **38**. If reservoir **35,36,38** did not pass through the cap **33**, the liquid **100** could not flow into reservoir **35,36,38**.

Appellant argues that Ohayon does not disclose decrease in ambient temperature will draw the scent from the tube and housing with air back into the container. Ohayon discloses the decrease in ambient temperature will draw the scent from the tube and housing with air back into the container (**column 7 line 55 through column 8, line 11: "...valve (36) may be actuated indirectly and set to open following a predetermined buildup of pressure inside the reservoir (3), and close when internal and external pressures are equalized, and this type of valve is well-known in the art..."**). Pressure is directly dependent on temperature. Ohayon's pressure will increase if temperature increases. Ohayon further discloses, in column 7, line 67 through column 8, line 1, "...the valve (36) should also allow air to be sucked into the reservoir..."

Appellant argues that Ohayon does not disclose a tube of small diameter passing through the cap. Ohayon discloses a temperature buffering scent reservoir **35,36,38** comprising a tube (**see figure 2**) of small diameter (**see figure 2, the tube diameter is small compared to the container 31,32**) passing through the cap **33**.

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(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

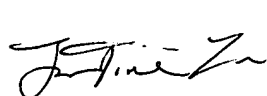
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Christopher S. Kim
Primary Examiner
Art Unit 3752

Conferees:

 for David Scherbel

Dave A. Scherbel
Supervisory Patent Examiner
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Justine R Yu
Supervisory Patent Examiner
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